

Application Number 10/583,011
Amendment dated July 22, 2008
Response to Office Action dated April 23, 2008

REMARKS/ARGUMENT

Claims 1-13 and 16-19 are pending in the application with claims 14 and 15 having been previously canceled, claim 17 having been withdrawn, and claims 1, 16, and 17 having been amended.

The specification has been amended to correct a typographical error.

Entry of these amendments is respectfully requested as it is believed they put the application in condition for allowance or in better condition for appeal.

In the current Office Action, the Examiner has stated, "Claims 15 and 17 remain held withdrawn from consideration as being drawn to nonelected subject matter"

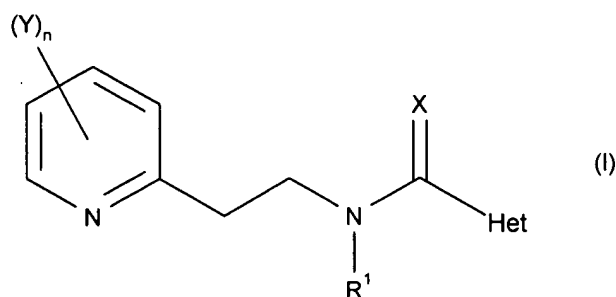
Claim 15 was canceled in the response to the previous Office Action.

Further, it is not seen how claim 17 can be withdrawn from consideration as being directed to non-elected subject matter while claim 16, upon which claim 17 is dependent, has not been so withdrawn. Reconsideration is respectfully requested.

Claims 1-14, 16, 18, and 19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. (WO 2004/074280) in view of Cooke et al. (WO 01/11965).

Claim 14 was canceled in the response to the previous Office Action.

Mansfield et al. disclose a compound of general formula (I):



in which:

X is an oxygen atom or a sulphur atom;

Y is the same or different and is selected from the group consisting of a halogen atom, a nitro group, a cyano group, a hydroxy, a carboxyl group, a C₁-C₈-alkyl, a C₁-C₆-halogenoalkyl having 1 to 5 halogen atoms, a C₁-C₈-alkylamino, a di-C₁-C₈-alkylamino, a C₁-C₈-alkoxy, a C₁-C₆-halogenoalkoxy having 1 to 5 halogen atoms, a C₁-C₈-alkylthio, a C₁-C₆-halogenoalkylthio having 1 to 5 halogen atoms, a C₂-C₈-alkenyloxy, a C₂-C₈-halogenoalkenyloxy having 1 to 5 halogen atoms, a C₃-C₈-alkynyloxy, a C₃-C₈-halogenoalkynyloxy having 1 to 5 halogen atoms, a C₃-C₈-cycloalkyl, a C₁-C₈-alkoxycarbonyl, a C₁-C₈-alkylsulphinyl, a C₁-C₈-alkylsulphonyl, a C₁-C₈-halo-genoalkylsulphinyl having 1 to 5 halogen atoms, a C₁-C₈-halogenoalkylsulphonyl having 1 to 5 halogen atoms or a C₁-C₆-alkoximino-C₁-C₆-alkyl;

R¹ is selected from the group consisting of a hydrogen atom, a cyano group, a nitro group, a formyl group, a C₁-C₆-alkyl, a C₁-C₆-alkylcarbamoyl, a C₂-C₆-alkenyl, a C₂-C₆-alkynyl, a C₁-C₆-halogenoalkyl having 1 to 7 halogen atoms, a C₁-C₆-alkoxy-C₁-C₆-alkyl, a C₁-C₆-cyanalkyl, a C₁-C₆-aminoalkyl, a C₃-C₆-cycloalkyl, a C₁-C₆-alkylcarbonyl, a C₁-C₆-

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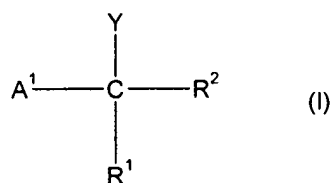
halogenalkylcarbonyl having 1 to 5 halogen atoms, a C₁-C₆-alkoxy-C₁-C₆-alkylcarbonyl, a C₁-C₆-alkylsulfanyl or a C₁-C₆-halogenalkylsulfanyl having 1 to 5 halogen atoms;

n is 1, 2, 3 or 4; and

Het represents an optionally substituted 5-, 6- or 7-membered non-fused heterocycle with one, two or three heteroatoms independently selected from the group consisting of substituted or unsubstituted nitrogen, unsubstituted sulphur, and oxygen; Het being linked by a carbon atom.

The Examiner has acknowledged that the compounds of Mansfield et al. differ from those of the present invention in that, in Mansfield et al., R¹-R⁴ are all hydrogen, whereas, in the compounds of the present invention, at least one of R¹-R⁴ is not hydrogen. In view of this, the Examiner has cited Cooke et al. to show the "optional interchangeability of hydrogen, alkyl, halogen, cyano, hydroxyl, amino, etc."

Cooke et al. claim a compound or a complex or salt thereof of the general formula I:



wherein:

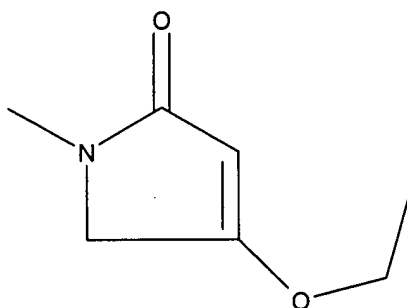
A¹ is 2-pyridyl substituted with from one to four moieties independently selected from the group consisting of halogen and trifluoromethyl, provided that at least one moiety is trifluoromethyl;

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Y is a moiety selected from the group consisting of $-L-A^2$ and $-L^1-A^3$

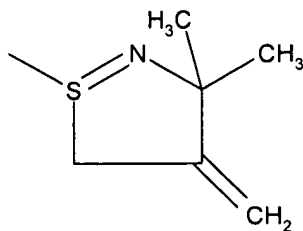
wherein:

A^2 is selected from the group consisting of unsubstituted or substituted phenyl, cyclohexyl, cyclopropyl, thienyl, imidazolyl, tolyl, and



wherein any substituents on A^2 are independently selected from the group consisting of alkyl, halogen, and haloalkyl;

A^3 is selected from the group consisting of unsubstituted or substituted phenyl, pyridyl, thiodiazolyl, triazolyl, fluorenyl, tolyl, tetrazolyl, pyrimidinyl, imidazolyl, benzthiazolyl, quinolinyl, and



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wherein any substituents on A³ are selected from the group consisting of alkyl, halogen, haloalkyl, hydroxyl, and phenyl;

L is a 3-atom linker selected from the group consisting of -N(R⁵)C(=X)N(R⁶)-, -N(R⁵)C(=X)CH(R³)-, -CH(R³)N(R⁵)CH(R⁴)-, -CH(R³)N(R⁵)C(=X)-, -ON(R⁵)C(=X)-; wherein the left hand side of L is attached to the central carbon atom of formula I;

L¹ is a 4-atom linker selected from the group consisting of -N(R⁹)C(=X)X¹CH(R⁷)-, -N(R⁹)C(=X)CH(R⁷)CH(R⁸)-; -N(R⁹)C(R⁷)=C(R⁸)C(=X)-, -N(R⁹)C(=X)C(R⁷)(R⁸)SO₂-, and -N(R⁹)C(=X)C(R⁷)(R⁸)X¹; wherein the left hand side of L¹ is attached to the central carbon atom of formula I;

R¹, R², R³, and R⁴ are independently selected from the group consisting of hydrogen or alkyl;

R⁵, R⁶, R⁷, and R⁸ are independently selected from the group consisting of hydrogen, alkyl, and acyl;

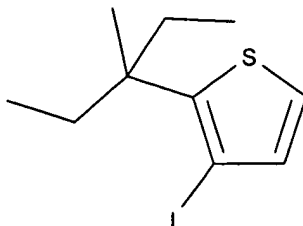
X is selected from the group consisting of oxygen and sulfur;

X¹ is selected from the group consisting of oxygen and -N(R⁹)-; and

R⁹ is selected from the group consisting of hydrogen and alkyl.

A perusal of the cited references has failed to reveal any compounds disclosed wherein the moiety corresponding to Het in the present claims is of the structure:

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which is disclosed in the present application as part of compound 33.

Examples A, C, and D of the present application all show good (at least 50%) to total protection being observed for *Alternaria Brassicae*, *Botrytis cinerea*, and *Pyrenophora teres*, respectively with compounds comprising this moiety.

Accordingly, it is requested that the rejection of claims 1-14, 16, 18, and 19 under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. in view of Cooke et al. be withdrawn.

Claim 1 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. According to the Examiner:

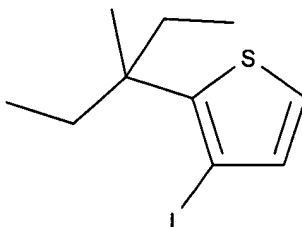
" ... The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

No support can be found in the specification for an ethylene group having two propyl groups attached to the thiophene."

The Examiner's position is not understood. Claim 1 recites:

" ... - Het represents a heterocycle of the structure

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Het being linked by a carbon atom; ... ". This structural formula is clearly supported in the table of paragraph [0246] of U.S. Patent Application Publication No.2007/0117845, the publication of the present application, in the descriptions of compound nos. 2, 4, 28, 33, 36, 37, 44, 48, 52, 55, 58, and 60.

Accordingly, it is requested that the rejection of claim 1 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, be withdrawn.

Claim 1 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because, according to the Examiner, "The expressions 'metallic complexes' and 'metalloidic complexes' are employed with considerable abandon in claim 1 with no indication given as to what complexes really are."

Claim 1 has now been amended so that the expressions "metallic complexes" and "metalloidic complexes" no longer appear therein.

Accordingly, it is requested that the rejection of claim 1 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, be withdrawn.

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Claim 1 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention.

Specifically, according to the Examiner, the expressions "metallic complexes" and "metalloidic complexes" in claim 1 are indefinite; and the term "general" in claims 1 and 16 is indefinite because it suggests that the compounds have other structures not contemplated by Applicants.

Claim 1 has been amended to delete "metallic complexes" and "metalloidic complexes".

Neither claim 1 nor claim 16 employ the term "general", this term having been deleted in the response to the previous Office Action. The term "general" has been deleted from claim 17 as noted above.

Accordingly, it is requested that the rejection of claims 1 and 16 under 35 U.S.C. 112, second paragraph, be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration is requested.

Respectfully submitted,



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